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July 13, 2016

San Francisco Bay Conservation and Development Commission  
455 Golden Gate Avenue, suite 10600  
San Francisco, CA 94102

Re: Application for Amended Permit (Amended from first application dated September 16, 2015) re: Required Shoreline Access from Lewelling Boulevard, in the City of San Leandro, over Heron Bay Homeowner Association Property (BCDC Permit No. 1992.057, dated July 5, 1994).

Gentlepersons:

This Amended Application is presented on behalf of Heron Bay Homeowners Association (hereinafter referred to as "the HOA" or "the Association" or "Heron Bay") in the matter of the alleged non-compliance of the Association with San Francisco Bay Conservation and Development Commission, Permit No. 1992.057 (alternately referred to on the Recorder's Copy of the Permit as Permit No. M92-57 (hereinafter referred to as "the permit"). This correspondence and the attached documents will constitute the Association's Second application for an Amended Permit seeking approval of as-built conditions that will put the HOA in compliance with the terms of the original permit and of several new additions. The HOA notes that their original application was presented on September 16, 2015. That application was rejected by BCDC. The Association received a letter from BCDC on May 26, 2016 advising them of the fact that the HOA was in violation of the referenced permit and then received a 35-day notice on the agreed-upon date of June 8, 2016.

For the record we would note that the original permit was issued to Citation Homes, the original developer and builder of the Heron Bay complex, which is comprised of 629 homes. There was no existing construction of homes prior to the issuing of the subject permit. Citation Homes turned over control of the complex to the original homeowner controlled Board of Directors more than twenty years ago with no reference whatsoever to the existing permit 1992.057. The current HOA had no knowledge of the existence of the permit nor or any alleged failures to comply until mid-summer 2014 when the HOA made application to the City of San Leandro for the installation of entrance gates at the complex because of growing crime on the grounds of the HOA. Apparently both the City of San Leandro and BCDC were unaware that the various entities were then in violation of the referenced permit. At that time the Association was advised by BCDC of the existence of the permit and alleged violations of that permit, in particular violations of the

requirements of section F (3) Public Access Improvements. Since that time the HOA has been meeting with and working with the staff of BCDC and the City of San Leandro to achieve mutually agreeable solutions to the existing problems. The May 26, 2016 letter from BCDC seems to infer that the Association has somehow been less than diligent in its pursuit of compliance with the permit terms. This is simply not the case. At all times during the past nine months the HOA has been diligently working on proposals that they contend would satisfy all permit needs and best serve all members of the community who may wish to use the bay trails. Several proposals have been made to the City involving the use and placement of a kiosk that would provide safety and security to the residents of the complex without affecting the free use of the bay trails by the general public. As will be demonstrated in this application, the HOA has made several proposals to the City for their review and acceptance. As acknowledged by BCDC in their May 26<sup>th</sup> letter, BCDC has been kept aware of those various applications both by BCDC and by the HOA. While the process has been slow and City responses have taken some time, the process has always been active and vigorous. And, as will be shown, the City has responded with suggestions regarding the permit application from the HOA for a kiosk and attendant which have been addressed. While the May 26<sup>th</sup> letter discusses the disapproval of a kiosk in the roundabout at the entrance to Bayfront Drive, that proposal was abandoned some time ago after rejection by the City. The fact of the matter is that the current proposed location of the kiosk is on Heron Bay property and is not on any property controlled or owned by the City of San Leandro. The HOA has received positive feedback and suggestions from the City and all of those suggestions have been incorporated into the current submittals. The HOA believes that they are on the verge of receiving acceptance of the current proposal from the City. The HOA asks that BCDC recognize this current situation and allow this proposal with the City to run its course. BCDC has always maintained that it would not consider any kiosk proposal until such time as the City would grant approval of same. The HOA believes that said approval may be very close. Of course once that approval would be obtained, then the HOA will present the plan to BCDC for comment and approval, as the HOA has always said they would do. The HOA maintains that the current proposal to the City is by far the most advantageous for the HOA, for BCDC and all of the residents of the bay area who might utilize the bay trails and for the City of San Leandro. As will be stated, the new proposal will grant parking close to the bay trail that will not be provided if the HOA is forced to strictly comply with the original permit requirements.

The purpose of this Second Amended Permit Application is to resolve the allegations of lack of compliance in the area of Public Access Improvements to the satisfaction of BCDC and the HOA. We would note that another check in the amount of \$600.00 is enclosed representing the application fee (2X) as suggested by BCDC in an email of September 11, 2015.

The HOA is also aware that the City of San Leandro was in default on certain terms contained in Permit no. 14-89, issued on March 7, 1990, as amended through June 28, 2000, and as recorded on October 6, 2000 as document no. 2000302674. It is the Association's understanding that the City has resolved its permit issues by providing six parking spaces in the roundabout at the beginning of Bayfront Drive in mitigation of

other requirements. While the HOA does not approve of nor appreciate this suggested parking, and while they find it unnecessary should the HOA's proposal for a kiosk be approved (which includes the addition of six parking spaces), the HOA will not comment on this agreement at this time. As BCDC pointed out in conversation, after the HOA resolves permit compliance with BCDC, the HOA is then free to attempt to convince the City to withdraw the roundabout parking in an Amended Permit Application. As previously stated the HOA considers parking in the roundabout to be potentially dangerous, impossible to monitor and a poor solution to the lack of parking for those using the bay trails, particularly when the first option for compliance presented by the HOA includes far more convenient parking than that provided by the City.

To recap the HOA understands that Permit 1992.057, section F (3)(c) required a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt, primary use area and a minimum total of 4 feet of shoulder. In fact the as-built condition contains a 36-foot wide two-lane asphalt street; curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½-feet wide. These dimensions generally run from the beginning of Bayfront Drive to the bay trails. The HOA, after considering the recent requirements of the City and the comments of BCDC in the recent letter, is suggesting three different options that would hopefully satisfy the requirements of BCDC, the City and yet offer Heron Bay the additional safety measures which was the impetus for the requests for gates in the first instance. These options are submitted in the order of preference to Heron Bay. The HOA firmly believes that Option 1 clearly will most benefit the users of the bay trail, will be the most aesthetically pleasing to the City of San Leandro and its residents and will best meet the safety concerns of the HOA. The options are as follows in order of preference:

Option 1:

Heron Bay proposes to the City of San Leandro (currently under review) and to BCDC to construct a new, smaller, fully contained kiosk that will be erected and sited on HOA property near the entrance to Bayfront Drive. This kiosk will be entirely off of the Bay Trail Access easement nearest the northwest junction of Bayfront Drive and the Lewelling Bulb, with a dedicated accessible nearby parking space for the entry attendant. This latter provision was a requirement of the City. In exchange for an approval of the kiosk, Heron Bay will dedicate a total of 6 standard sized parking spaces including accessible compliant spaces, as required by current ADA regulations, at the western end of Bayfront Drive for use by bay trail users during bay trail hours plus one hour past sunset. This grant of parking for bay trail users is contingent upon approval of the kiosk proposal. The HOA will erect license plate readers columns strategically along Bayfront Drive so as to not encroach on easements of record. The HOA will paint sharrows on both lanes of Bayfront Drive. The HOA will further erect bay trail way-finding signage along the bay trail access easements as per BCDC standards. For the benefit of BCDC, a rendition of this proposal is attached to this application, marked Exhibit A, and made a part hereof by reference.

Though not a part of the BCDC Option 1 permit application, as a courtesy the HOA is notifying BCDC that, at the suggestion of the City, the HOA is proposing to erect an automated barrier arm, fold away bollards, and a license plate reader column on Anchorage Drive, completely off the public right-of-way and sited so as to avoid encroaching upon any easements of record. This plan for Anchorage Drive will in no way affect the visual recognition of the bay trails to the general public.

In support of the HOA's Option 1 proposal, the HOA submits the following materials in order to document their good faith in attempting to resolve the compliance issues with BCDC. As BCDC will see from the brief chronology, the HOA has been diligent in their pursuit of approval from the City that would then allow the HOA to complete the permit application to BCDC and the HOA has every reason to expect that they will soon obtain approval from the City.

1. Exhibit B attached hereto consists of true copies of the Agreement for Payment of Fees for Application Processing, Planning Permit Application and map of Tract 6810 showing. You will please notice that this application was submitted on March 14, 2016. We apologize for the quality of the copy but this was the best that could be obtained.

2. Exhibit C attached hereto (without attachments) consists of a letter dated April 15, 2016 from the City of San Leandro, Elmer Penaranda, stating that the application of Heron Bay is incomplete and suggesting several items that need to be addressed in order to make it complete. We note that BCDC was copied with this letter. Heron Bay now states that the modifications and changes that are suggested in Exhibit C have in fact been addressed.

3. Exhibit D attached hereto is the back check letter response of Jeff Tepper, consultant for the HOA, dated June 14, 2016 that included engineering drawings for Anchorage Drive, drawings depicting the rest room inside of the kiosk, deleted the monument sign on Lewelling Boulevard from this application and added the accessible parking space for the entry attendant. This letter demonstrates that the HOA continues to work closely with the City to meet their requirements for approval of the kiosk plan.

The above attachments clearly demonstrate that the HOA has been active in attempting to gain City approval for the current kiosk proposal, which, after all, is the course of action that was suggested by BCDC. The correspondence indicates that the City is working with the HOA to approve a kiosk that satisfies both the City and the HOA needs and the HOA has no reason to believe that such an agreement will not be reached in the near future. The HOA urges BCDC to grant the HOA the likely short period of time that will be required to gain approval from the City for the kiosk plan as demonstrated in Option 1. This plan will clearly be the most beneficial to all and will give six extra parking spaces to the users of the bay trails, bicycle sharrows, all without disturbing the pleasant environment and landscaping already present on Bayfront Drive. If, however, BCDC were unable or unwilling to grant this additional time period, keeping in mind that twenty years have passed since the issuance of the original permit, then the HOA would suggest the following options in order of preference.

## Option 2:

The HOA would propose to leave the existing 6' wide sidewalk and 4' wide landscape strips on each side intact. The HOA would add a painted 6' wide bay trail access bike lane along the curb that blends in with the existing bike lane along Lewelling Boulevard for bicyclists to use during the hours the bay trail is operational. In this way the total width of the public access easement meets the 12' total width required in the original permit. The kiosk and the conditional Bayfront Drive parking would be deleted from this proposal. This proposal would eliminate the need to destroy existing sidewalk and landscape which will be a terrible eyesore to members of the public and to those wishing to use the bay trails. Certainly we can agree that a bicycle lane plus sidewalk equaling 12' wide is more attractive and useful than 12' of paving with no landscape. If BCDC does not approve of this option, then option 3 below would be the final suggestion of the HOA.

## Option 3:

The HOA would remove 4' of existing landscaping between the vertical curb face and the existing sidewalk. They would further remove 2' of existing landscape between the existing sidewalk and the existing wall leaving approximately 2' of landscape adjacent to the existing wall. The HOA would pave the two described areas of former landscaping to provide a 12' wide public access along the length of Bayfront Drive. The HOA would have to move 4 existing street lights and realign electrical equipment boxes in the remaining landscape area to avoid encroachment into the airspace above the now 12' wide public trail easement. The kiosk and the conditional Bayfront Drive parking would be deleted from this proposal. While this option represents the strict language of the original permit, it is hard to say that this is the most beneficial to the public and the residents of San Leandro. This option creates a harsher, less visually pleasing entrance to the bay trails and adds nothing to the actual public access. Please remember that this existing access has been in place for almost twenty years without complaint from the public. Is it really necessary to revert to a less attractive, less inviting environment for the sake of compliance with a forgotten permit? Again, Heron Bay urges BCDC to allow it to complete its applications to the City for Option 1. Heron Bay would then immediately submit the City approved permit to BCDC for review. Hopefully, Option 1 offers compliance and betterment for all parties.

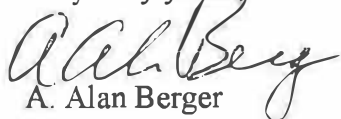
## Legal Instrument to Guarantee the Public Access.

The HOA has received BCDC's comments on the necessity for a legal instrument guaranteeing public access and the fine structure should one not be produced during the 35 day time period. As BCDC itself points out, the HOA is caught in a Catch 22. Until it is determined what remedial plan will be implemented, and which Option approved, the HOA cannot have a surveyor specify the exact property description subject to the permanent guarantee and produce the required document. From the beginning the HOA

has stated its willingness to produce such a guarantee. It is prevented from doing so until such time as the permit application for whichever plan is to be implemented is approved. It strikes the HOA as being unreasonable to threaten fines for lack of a document that has been missing from both the HOA and the City for twenty years when the parties have been diligently working toward a solution that would allow the HOA to, in fact, produce the required guarantee. Particularly considering there has never been a single instance of denied public access and considering that the HOA has consistently stated that they are more than happy to produce said requirement when the final solution is approved and put into place.

This document and the attachments thereto constitute the Heron Bay Homeowners Association's second application to BCDC for an Amended Permit. If BCDC has any questions regarding the materials submitted or the intent of the Association in so filing, please do not hesitate to contact the undersigned. The HOA reserves the right to submit additional materials or clarifying statements during the pendency of the application.

Very truly yours,



A. Alan Berger

Attorney for Heron Bay Homeowners Association

Cc: Client

AAB/ceb

Amendment No.	3 to 1992.057
Rec'd on	7/13/16
Staff asgnd	Maggie
Logged on	7/18/16
Fee Paid	\$600.- C/C N <sup>o</sup> 23291
Non-Mat	✓